



February 7, 2014

William H. Stallings, Chief
Transportation, Energy & Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20530

**Re: United States v. US Airways Group, Inc. and AMR Corp.,
No. 1:13-cv-01236 (CKK) – Comments of Consumers Union**

Dear Mr. Stallings:

Consumers Union, the public policy and advocacy division of Consumer Reports,¹ submits these comments in the above-referenced case pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (the Tunney Act).

We share the concerns of others that the Department's proposed settlement of its challenge to the merger of US Airways and American Airlines may not adequately address the extensive competitive harms identified in the Department's complaint in August as likely to result from the merger.

When this merger was announced a year ago, we expressed concern that it could cause significant and widespread harm to competition and consumers.² We urged the Department to undertake a most careful and thorough investigation, focusing not merely on how individual city-to-city routes would be affected, but also how the changes in market structure, brought on by this further reduction in the number of competing networks, could more broadly alter the airlines'

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers, and to empower consumers to protect themselves, in the areas of telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues, including competition policy. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² See, e.g., "The American Airlines/US Airways Merger: Consolidation, Competition, and Consumers," Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights, S. Comm. on the Judiciary, March 19, 2013 (statement of William McGee, Consumers Union).

profit-making incentives away from healthy competition, and toward fewer flights, consolidated routes, higher fares, and reductions in service quality.

We were heartened by the forceful complaint the Department filed in August, affirming and highlighting each of these concerns. Among other things, the complaint noted that the merger would create the world's largest airline, reduce the number of major hub-and-spoke-network legacy airlines from four to three, and result in four carriers – the three legacy carriers plus Southwest airlines – controlling more than 80 percent of our domestic commercial air travel market. The complaint *identified more than 1000 city-to-city routes* where the merger would increase market concentration to an extent beyond – often far beyond – levels considered presumptively unlawfully anticompetitive under the widely accepted Herfindahl-Hirshman Index (HHI).³

We are concerned that the settlement stops short of remedying all the competitive harms identified in the complaint. It gives the go-ahead to the merger, conditioned on the merged airline divesting 104 air carrier slots at Reagan National Airport in Washington, D.C., 34 slots at LaGuardia Airport in New York, and two gates at each of five other airports – addressing only a small portion of the 1000+ routes identified as raising competitive red flags.

As we noted when the settlement was announced, the divestitures agreed to in the proposed consent decree are significant concessions, and could give a competitive boost to low-cost carrier airlines for certain routes. But we remain concerned that competition on numerous other routes could be harmed as a result of the major market restructuring that will occur with the elimination of a major legacy airline.⁴

We hope our comments will help provide sufficient impetus for helping strengthen the decree to more fully address the broader competitive concerns identified in the Department's complaint.

Respectfully submitted,

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Consultant, Aviation and Travel

George P. Slover
Senior Policy Counsel

³ See U.S. Dep't of Justice and Federal Trade Comm'n, Horizontal Merger Guidelines, Section 5.3 (2010).

⁴ See *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 370 (1963) (“anticompetitive effects in one market [cannot] be justified by procompetitive consequences in another”); *Kottaras v. Whole Foods Market, Inc.*, 281 F.R.D. 16, 25 (D.D.C. 2012) (“a merger that substantially decreases competition in one place—injuring consumers there—is not saved because it benefits a separate group of consumers by creating competition elsewhere”).